

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 19 CR 00277
)
CONCEPCION MALINEK,) Chicago, Illinois
) March 23, 2021
Defendant.) 1:06 p.m.

TRANSCRIPT OF PROCEEDINGS - Sentencing
Volume 1
BEFORE THE HONORABLE EDMOND E. CHANG

APPEARANCES:

For the Plaintiff: HON. JOHN R. LAUSCH, JR.
United States Attorney
BY: MR. CHRISTOPHER V. PARENTE
Assistant United States Attorney
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604
(312) 353-5300
christopher.v.parente@usdoj.gov

For the Defendant: MR. ROBERT L. RASCIA
MR. LIAM KELLY
650 North Dearborn Street, Suite 700
Chicago, Illinois 60654
(312) 994-9100
rrascia@rasciadefense.com

ALSO PRESENT: MS. KATHLEEN O'HANLON and
MR. JORGE CARBAJOSA,
Court Interpreters

ALSO PRESENT VIA VIDEOCONFERENCE:

MS. LISA RUIZ,
United States Probation Office

Court Reporter: Judith A. Walsh, CSR, RDR, F/CRR
Official Court Reporter
219 South Dearborn Street, Room 2118
Chicago, Illinois 60604
(312) 702-8865
judith_walsh@ilnd.uscourts.gov

1 (Proceedings heard in open court:)

2 THE CLERK: 19 CR 277, USA versus Concepcion Malinek.

3 THE COURT: You can -- counsel can stay at the
4 counsel tables and just talk into the mikes right there. So
5 everyone can sit.

6 All right. Let's get appearances for the record, for
7 the government first.

8 MR. PARENTE: Good afternoon, your Honor. Chris
9 Parente for the United States.

10 MR. RASCIA: Good afternoon, your Honor. Robert
11 Rascia and Liam Kelly for Ms. Malinek.

12 THE COURT: Okay. Good afternoon to you.

13 And I note the defendant's presence.

14 And we should get the appearance of the interpreter
15 as well.

16 INTERPRETER O'HANLON: Good afternoon, your Honor.
17 Kathleen O'Hanlon, interpreter.

18 INTERPRETER CARBAJOSA: Good afternoon, your Honor.
19 Jorge Carbajosa, interpreter.

20 THE COURT: All right. Good afternoon to you.

21 And I believe we have the probation officer by phone.

22 THE PROBATION OFFICER: Yes. Good afternoon, your
23 Honor. Lisa Ruiz on behalf of the probation office.

24 THE COURT: Oh, and by video as well. All right.
25 Good afternoon to you.

1 Okay. We are here for the sentencing. Are both
2 sides ready to proceed? Mr. Parente?

3 MR. PARENTE: Yes, your Honor.

4 THE COURT: Mr. Rascia?

5 MR. RASCIA: Your Honor, I am. I just want to note
6 for the record that I have spent as much time as I was allowed
7 by Livingston County over the last several months doing
8 telephone conferences and videoconferences with Ms. Malinek.
9 She did request on multiple occasions that I make an in-person
10 visit, but Livingston County did not allow that. I just want
11 to make sure that she's ready. She told me previously that
12 she was, but I'd like her to acknowledge that.

13 THE COURT: Okay. Yes. Thanks for that information.
14 I will certainly elicit that from Ms. Malinek.

15 And to do that, though, Ms. Malinek, I need to first
16 have you put under oath to tell the truth. As any non-lawyer
17 speaking in court, you do have to be put under an oath.

18 So I will ask the courtroom deputy to do that now.

19 THE CLERK: Ms. Malinek, if you would please raise
20 your right hand.

21 (Defendant sworn through the interpreter.)

22 THE DEFENDANT: Yes, that's correct.

23 THE CLERK: Thank you.

24 THE COURT: Okay. Thank you, Ms. Malinek. All
25 right. So, Ms. Malinek, have you had enough time to prepare

1 for today's sentencing?

2 THE DEFENDANT: Yes, that's correct.

3 THE COURT: For example, have you had enough time to
4 read over the sentencing filings in this case? And that
5 includes the presentence report which was that long document,
6 single spaced, as well as the supplemental reports that were
7 filed in this case.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Also, have you had enough time to discuss
10 the sentencing with your attorney, Mr. Rascia?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And it does sound like he had some
13 difficulties in arranging time to visit with you and so,
14 therefore, he spent more time talking to you over the phone.
15 But do you feel prepared for today's sentencing?

16 THE DEFENDANT: Yes, that is correct, your Honor.

17 THE COURT: Okay. Now, I'm also going to ask you
18 whether you are still satisfied with the advice and
19 representation that Mr. Rascia has provided to you in this
20 case. Are you satisfied with his advice and representation?

21 THE DEFENDANT: Yes, your Honor. That's correct, I
22 am satisfied.

23 THE COURT: Okay. And lastly, for example, has he
24 tried to answer the questions that you have posed to him?

25 THE DEFENDANT: That's correct.

1 THE COURT: All right. I also want to -- that's all
2 I have for you right now, Ms. Malinek.

3 I wanted to just get a couple other things on the
4 record. First, there had been quite a bit of logistical
5 arrangements that had to be made. We do have two overflow
6 courtrooms given the social distancing requirements.

7 And also, I want to note for the record that there
8 will be some victim witnesses who will be making statements
9 either by video or by phone. And I wanted to make sure,
10 Mr. Rascia, that you don't have an objection to those remote
11 appearances.

12 MR. RASCIA: Your Honor, I do not.

13 THE COURT: Okay. And then also, I believe the
14 defense is going to be presenting three in-person witnesses on
15 behalf of the defendant. And so they will be testifying here
16 in person. And I wanted to make sure that you had no
17 objection that they remain masked.

18 MR. RASCIA: I do not have an objection, your Honor.
19 And I think I did respond to that email earlier today, but
20 that's still my answer. No objection.

21 THE COURT: Okay. Thank you. Yes, I'm just putting
22 it on the record. It was quite a bit of logistics to work
23 out.

24 MR. RASCIA: I just wanted to make sure I didn't
25 forget something.

1 THE COURT: Okay. Then let's talk about the
2 presentence report itself. So other than the two
3 objections -- I think you ended up with two, Mr. Rascia,
4 objections to the guidelines calculations -- were there any
5 other objections or corrections that you wanted to propose?

6 MR. RASCIA: No, your Honor.

7 THE COURT: Okay. And how about for the government?

8 MR. PARENTE: No, your Honor.

9 THE COURT: Okay. Setting aside the -- and let me
10 just make sure, Mr. Rascia, you ended up with an objection to
11 the bodily injury to victim enhancement and then the
12 vulnerable victim enhancement. And those are the two; is that
13 correct?

14 MR. RASCIA: That is correct, your Honor.

15 THE COURT: All right. So other than -- setting
16 those aside for now, I do adopt the presentence report as
17 based on detailed and reliable information.

18 Okay. Let's talk about those guidelines
19 calculations. Okay. There's no dispute over the base offense
20 level under 2H4.1, so the base offense level is 22. There is
21 no longer a dispute over the three-level increase for someone
22 who was involuntary -- was in involuntary servitude for a year
23 or more. That's under B3A. Okay. And there's no dispute
24 over the two-level increase that another felony was committed
25 during and in connection with the underlying offense. That's

1 under B4A in light of the fraudulent documents, immigration
2 documents. Okay. The rest are disputed. And then there's a
3 three-level decrease for acceptance of responsibility.

4 Okay. So are those, in -- those particular
5 guidelines are not disputed, Mr. Parente?

6 MR. PARENTE: That's correct, Judge.

7 THE COURT: And Mr. Rascia?

8 MR. RASCIA: That's correct, your Honor.

9 THE COURT: Okay. Then let's talk about the disputed
10 ones. Okay. On the victim, that a victim suffered bodily
11 injury, obviously, I've read all the filings. Do you have
12 anything more to add on this for the government?

13 MR. PARENTE: A little argument, your Honor, yes.

14 THE COURT: All right. Go ahead.

15 MR. PARENTE: You know, Judge, this enhancement says
16 if any victim sustains serious bodily injury, increase by two
17 levels. And I want to be clear that the defendant's only
18 objection here is that this child should not be considered a
19 victim. It does not -- it is not objecting to whether it was
20 serious bodily injury or anything like that. It is solely
21 based on the child not being labor trafficked and, therefore,
22 he can't be a victim. And we would dispute that now.

23 The guidelines -- but this guideline does not define
24 "victim," but there are definitions that are used by Congress
25 and also in the guidelines that define "victim."

1 Specifically, for the victim's rights statutes under 3771(e)
2 and the Mandatory Victim Rights Act under 3663A(a)(2), it
3 defines a crime victim as, quote, "a person directly or
4 proximally harmed as a result of the offense." And then
5 although this guideline doesn't define "victim" in the context
6 of bodily harm, 2B1.1 does, and it defines a victim as any
7 individual who sustained bodily injury as a result of the
8 offense.

9 So with that sort of as a framework, Judge, we
10 believe that this victim, the two-year-old child of both
11 parents who were labor trafficked by the defendant, would
12 qualify as a victim. First, this defendant knew that these
13 people had children. She encouraged them to bring the kids
14 with them and then she, in fact, charged these people for
15 daycare services that she ran out of her house by her parents.

16 Second and more compelling, your Honor, is she used
17 the children as a means to control the parents. You've seen
18 this in the statements. She would constantly threaten these
19 people, "If you talk about what's going on in this house, if
20 you talk about the debt that you're paying me, I will have you
21 deported, and I will keep your kids here." She used the
22 children to commit the offense.

23 Third point, your Honor, the only reason this child
24 was at home in that residence unsupervised when this accident
25 occurred was because she had both parents working in the

1 factory at that time unable to take care of him, which is
2 again the offense here. And, I mean, that is the definition
3 of proximate cause, your Honor.

4 And so if you look at the statement of Victim 9 who
5 is the child's father, he even said that day that this
6 happened, her parents were sick. They weren't able to watch
7 the kid. So he asked, "Can I please stay home and watch my
8 child?"

9 And she said, "No, you have to go to work and pay off
10 your debt." That's why the child was there unsupervised and
11 able to spill this boiling water on his head. So, yes, we
12 think that that's clearly a proximate cause of his injury, and
13 he is a victim of the offense.

14 But there's a secondary argument too here, Judge, and
15 that is even after the accident happened -- we all agree it's
16 an accident. No one is saying he was intentionally burned.
17 But even after it happened, look what she did. The child was
18 in extreme pain. And this is a guideline for the causing of
19 extreme pain. That's the definition of serious bodily injury.

20 The child is in extreme pain, and the defendant tells
21 these people, "You will not take him to the hospital. You
22 will not get him pain relievers or medical treatment" because
23 she wants to -- she knows what's happened. Her whole life,
24 this whole crime is about making sure nobody talks about
25 what's going on in the house. Nobody from the outside sees

1 these people. That's why they have to leave through the back
2 door. They're constantly warned, "If you tell anybody about
3 what's happening here, you will be deported, and I will keep
4 your kids."

5 So she won't let them go to the hospital because she
6 knows when you take a two-year-old child to the hospital with
7 this kind of burn, questions will be asked. DCFS is going to
8 come to the house. So she prevented this child from getting
9 pain relief to continue this offense.

10 So there's a whole second part of this as well. So
11 yes --

12 (Background noise.)

13 THE COURT: I'm sorry. We're getting -- someone
14 might have dialed in. We're getting sound from that dial-in.
15 So everyone who is dialed in ought to be on mute at this
16 point.

17 All right.

18 MR. PARENTE: So yes, Judge, the government's
19 position is that this child suffered serious bodily injury and
20 was a result of this offense, and she should be held
21 accountable for this two-point enhancement.

22 THE COURT: All right. Thank you.

23 Mr. Rascia?

24 MR. RASCIA: Judge, Mr. Kelly is going to address the
25 Court regarding that objection. But I want to make an issue

1 clear with the Court as I advised Mr. Parente. The defendant
2 has not challenged that the child was injured and that the
3 enhancement is based on the injury to the child.

4 On the issue of the medical treatment, I intend to
5 present two witnesses for the purposes of presenting character
6 reference -- evidence as to the defendant. But if you want to
7 hear from those witnesses now, I'll certainly present them.
8 But again, we are not challenging whether or not the child was
9 injured.

10 THE COURT: Okay. Yes, so I think we're still
11 getting some sound. So we're going to have to -- just give us
12 one moment as we put this on mute.

13 (Discussion off the record.)

14 THE COURT: Back on the record.

15 If I think I need to resolve facts on that, the back
16 half of, I think, the government's secondary argument about
17 the prevention of the parents bringing the child to the
18 hospital then I'll -- we'll make a detour, but I'm not sure
19 I'm going to need it.

20 So Mr. Kelly?

21 MR. KELLY: Thank you, your Honor. Your Honor, the
22 most important point of law on this issue is the fact that the
23 guideline is silent. Guideline 2H4.1 contains no definition
24 of "victim." The sentencing commission was perfectly capable
25 of adopting and including an expansive definition of "victim."

1 They've done that in other guidelines. They did that in
2 guideline 3A1.1 which is the other guideline at issue in
3 today's hearing.

4 So principles of lenity would suggest, and just the
5 context of the statute in that it remains silent on an
6 expansion of the definition of "victim" would indicate that it
7 should be very narrowly construed. And as the government has
8 conceded, no one -- obviously, no one is suggesting that this
9 child was used to commit forced labor. There simply needs to
10 be a line drawn somewhere at which the unfortunate just
11 accidents of everyday life are not within the purview of the
12 sentencing analysis.

13 So I would point out that the government's arguments
14 are incredibly fact intensive. To point out one, the
15 statement was made that this is boiling water. What it was,
16 was I would call it a coffee thermos with hot water that was
17 spilled. Okay. So that's just one factual difference; not
18 related to whether or not the injury was severe but related to
19 just the context of the injury and whether that context --
20 whether that injury -- if we are to apply the more expansive
21 view that the government has suggested, we don't see a basis
22 to apply that very expansive view, but if we are to apply that
23 and get into that factual analysis these -- these individuals
24 were not targeted because they had children. It was simply
25 irrelevant to the alleged calculus that the defendant put in

1 place here.

2 So it was just completely ancillary that an
3 unfortunate thing happened. No one has alleged this was done
4 on purpose. We come back to those factual disputes about what
5 occurred afterwards, what the response actually was, what any
6 statements about the response were.

7 Those are certainly questions of fact if we even
8 reach that more expansive definition. But I would urge based
9 on just the plain reading of this guideline that we take a
10 very narrow view that only individuals who were forced to
11 labor should be deemed victims under this guideline.

12 THE COURT: So do you dispute that the defendant told
13 the -- I think it was Victim 8 and Victim 9 that they could
14 not take their child to the hospital?

15 MR. KELLY: We -- we absolutely -- we dispute it. We
16 dispute most everything the government has said in terms of --
17 more importantly, the connotations of what they've said in the
18 sense that this was -- that this was used with the intent to
19 further the scheme. The --

20 THE COURT: Well, I don't think that, yes, the
21 government argued that it was with the intent to further the
22 scheme so much as it was, in the government's view, necessary
23 to avoid this scheme being revealed. So and there's a
24 difference there.

25 So let me -- again, I'm not sure, on the legal point,

1 I'll give the government a chance to address this in a moment,
2 but factually it's going to be relevant to 3553 no matter
3 what.

4 I guess I would caution that if you raise a fact
5 dispute on this and if you -- and maybe you'll just try to
6 debate whether the government has met its burden by a
7 preponderance, but if you affirmatively deny, then you could
8 jeopardize acceptance of responsibility. So I just want to
9 caution you on that point.

10 MR. RASCIA: Judge, may I address that point?

11 THE COURT: Yes. Go ahead.

12 MR. RASCIA: Judge, I'll tell you in summary what I
13 expect the Court and the government to hear from the witnesses
14 today on that narrow point of what occurred in the aftermath
15 of the injury of the child. And they'll address you directly.

16 And again, as far as acceptance of responsibility,
17 the defendant is not denying that this child was injured in
18 her home while in the care of her sister. That's undisputed.
19 What you'll hear from the witnesses is that during the time
20 that the defendant's niece was watching the child, the child
21 grabbed at a cup, slammed the cup onto the table, the liquid
22 came out of the cup and splashed the child in the head and the
23 face.

24 She took immediate action to comfort the child, took
25 a clean towel, put cold water on it, started patting the

1 child's head but contemporaneous with that placed phone calls
2 to the child's mother and the child's father. The defendant
3 was not present in the household at the time the incident
4 happened. In fact, the defendant was in a vehicle driving the
5 child's father to his workplace.

6 Defendant's mother -- the child's mother was on her
7 way back from the workplace at the time that the incident
8 happened. So she was closer to the Cicero residence at the
9 time of the incident than the father was.

10 When the mother of the child returned to the
11 residence, the child was turned over to the mother, and the
12 care of the child was left to the mother, the mother of the
13 injured child. The defendant didn't arrive back at the
14 location until approximately an hour to an hour and 20 minutes
15 after the incident happened.

16 Additionally, I think the witnesses will also tell
17 you that photographs of the child when sent to the mother and
18 to the father. The father went to work. He didn't return to
19 the residence until his shift had ended, but the care of the
20 child was left to the mother.

21 THE COURT: Okay. Yes, Victim 8 says in the
22 under-oath grand jury statement, "I needed to take him to the
23 hospital, and Malinek said if I did, she would have me
24 deported. Malinek said if I took him to the hospital, she
25 would tell the hospital that my son's injury was my fault."

1 So is that going to be disputed?

2 MR. RASCIA: Judge, can I have a moment to speak to
3 my client?

4 THE COURT: Yes.

5 (Discussion had off the record.)

6 MR. RASCIA: Your Honor, my client advises that she
7 did not make those statements. And I don't think it should
8 impact her acceptance of responsibility. She has acknowledged
9 responsibility for the child being in her home.

10 THE COURT: Okay. So --

11 MR. RASCIA: She does maintain she took no steps to
12 prevent anyone from providing medical treatment to the child.

13 THE COURT: Okay. So let me -- I'm just going to
14 play this out, and then we can talk about how this impacts on
15 3553. So there is no definition for "victim" unlike in other
16 guidelines provisions or statutory provisions. And I do think
17 the rule of lenity then starts to kick in; that is to say that
18 a victim is someone who is directly the victim of the
19 underlying offense.

20 Also, in 2H4.1 in subparagraph (b)(3), that's the
21 provision that provides for the increase based on the time
22 periods that the victim is under involuntary servitude, it
23 says, "if any victim was held in peonage or involuntary
24 servitude for," and then it has those three time periods.

25 That to me suggests that the guideline is describing

1 the victim as someone who is in peonage or involuntary
2 servitude and then the guideline says, "Now based on how long
3 they are, you can kick up the offense levels." So I think
4 that's a textual clue that the provision is covering only
5 those who are the direct victims.

6 That is not to say that there is -- that this won't
7 be considered under 3553. It plainly would be. This plainly
8 has to do with the offense conduct and the defendant's
9 personal history. And so it is -- yes, it's simply a
10 guidelines ruling. Okay.

11 So did you want to respond to that point about B3?

12 MR. PARENTE: No, your Honor. And again, I think
13 your Honor points out that it's not defined. I think the
14 Court has discretion, especially given the unique
15 circumstances here where we're talking about both parents are
16 literally at the factory being labor trafficked when this
17 happened.

18 And so I would argue that the child in that point is
19 a victim of the offense, but we completely -- if your Honor
20 wants to consider her 3553, we think this example just
21 highlights the dangerousness of this crime and the seriousness
22 of the offense. And we understand the Court's ruling. And we
23 will argue it under 3553.

24 THE COURT: Okay. So I will decline to impose this
25 in light of the coverage, the more narrow coverage of "victim"

1 under the guidelines.

2 Now, just for 3553 purposes, Mr. Rascia, I guess as I
3 was talking this through, you might very well be right that
4 it -- because it's not a guidelines issue that is in dispute
5 in terms of the aftermath that maybe it wouldn't go to
6 acceptance of responsibility in the guidelines sense, but it
7 would in the colloquial sense which is just as important under
8 3553 if the defendant expresses a remorse and so on.

9 Now, it may be that as a factual matter, the
10 conversations which are reported in the grand jury statements
11 are not ones that your particular witnesses would have been
12 present for in any event. So right now, what you've done is
13 just proffered what your client would say. Do you plan to put
14 her on the stand?

15 MR. RASCIA: Your Honor, she is going to make a
16 statement to the Court today.

17 And on the particular issue of the statements to the
18 grand jury, I spent many, many hours with Ms. Malinek going
19 over all this material. Those -- the incident that happened
20 in this case, the injury to the child, as best I can tell from
21 the information I've looked at occurred, I believe, in
22 February of 2019.

23 In the defendant's plea declaration, she did
24 acknowledge making certain statements that are similar to what
25 you've alluded to today about the threat of deportation. And

1 she acknowledged that in her plea declaration.

2 I think one of the other things you'll hear from a
3 witness today is that when other individuals within the
4 residence needed medical treatment, Ms. Malinek took them to
5 get the medical treatment.

6 So I intend to speak to her -- if the Court would
7 allow me to again before she addresses the Court -- on the
8 more narrow issue of a commentary about deportation in
9 relation to the injury to the child.

10 THE COURT: Okay. And so the -- of course, the
11 defendant has a right to and, of course, will allocute. I
12 don't normally put the defendant under oath when the defendant
13 allocutes because it's not considered substantive evidence to
14 a particular factual finding. It's an expression of the
15 defendant's remorse, their plans for the future, and so on.
16 So it's not typically taken in that light.

17 So you will have to decide when the time comes as
18 you're presenting witnesses whether you're going to put her on
19 the stand for purposes of substantive factual testimony. And
20 you can make that decision after talking with her sometime
21 later.

22 Okay. So that's the decision on the proposed bodily
23 injury enhancement. It does not apply.

24 All right. Let's talk about 3A1.1 which is the
25 vulnerable victim enhancement. And again, I've read through

1 the filings. Is there anything that the government wants to
2 highlight?

3 MR. PARENTE: Yes, your Honor, just briefly. And
4 again, I spoke to defense counsel about this prior to the
5 hearing, but the Seventh Circuit has addressed this issue in
6 *U.S. v. Calimlim* which is 538 F.3d 706 in which they heard,
7 you know, the same argument that the defendant's making where
8 the defendant said, you know, in a forced labor case that the
9 victim being an undocumented individual is not unusual;
10 therefore, it shouldn't apply. And the Seventh Circuit
11 expressly rejected that. And I'm quoting, and they said:

12 "Lest there be any doubt about our position on the
13 question raised by the Calimlins, we clarify today that
14 where vulnerability is not already accounted for in the
15 guidelines, we will apply the vulnerable-victim
16 enhancement when the victim is a member of a group
17 typically vulnerable to that particular manifestation of
18 a general offense committed by the defendant, whether or
19 not the victim is otherwise unusually vulnerable. In
20 this case, Martinez was a member of a group typically
21 targeted by those desiring forced laborers, but her group
22 (illegal aliens) is only part of the broader set of
23 possible victims. She was therefore a vulnerable victim
24 for the purposes" of this guideline and, "The district
25 court erred when it denied the enhancement."

1 And so here, Judge, you know, focusing on Victim 10
2 first, she has a sixth grade education. She's an undocumented
3 worker. Ms. Malinek knew all of this. They're from the same
4 village. She targeted her based on those vulnerabilities, and
5 then she exploited her. She would threaten her, "I'll tell
6 you" -- "if you leave, I'll tell Immigration on you."

7 When this victim pushed back and said, "Why is my
8 debt going up so much," and Ms. Malinek blamed the bank. And
9 the victim asked to go to the bank. She said, "You can't
10 speak English. You're not allowed." I mean, this is a
11 vulnerable victim case.

12 If you look at Victim 1, Judge, she's a 15-year-old
13 girl. One of the factors in here is the age of the victim.
14 All of these victims share the same vulnerability, which is
15 being illegal aliens. And the defendant exposed -- she
16 exploited that. And Victim 1 specifically was 15 years old,
17 and the defendant exploited that. All of these victims had
18 education levels of second, third, fourth grade. The
19 defendant exploited that.

20 So we think based on the Seventh Circuit's decision
21 in *Calimlim* as well as just the fact that your Honor is aware
22 of that this vulnerable victim enhancement should apply here.

23 THE COURT: Okay. Mr. Rascia?

24 MR. RASCIA: Your Honor, Mr. Kelly is going to
25 address you on that point.

1 THE COURT: Okay. Mr. Kelly?

2 MR. RASCIA: If the Court allows.

3 THE COURT: All right. Go ahead.

4 MR. KELLY: We would like to rest on the arguments in
5 our pleading with the exception, I would like to add some
6 argument addressing *Calimlim*. We don't believe that that case
7 is controlling in the sense that it alleviates us of the
8 obligation to do some analysis here. The appellant in
9 *Calimlim* --

10 INTERPRETER CARBAJOSA: Pardon me, your Honor. The
11 interpreter is having a hard time hearing.

12 THE COURT: Yes, if you could just pull the
13 microphone --

14 INTERPRETER CARBAJOSA: There is a muting factor that
15 the masks have which takes us an additional half a second to
16 hear what is being said --

17 THE COURT: Okay.

18 INTERPRETER CARBAJOSA: -- and understanding. Thank
19 you.

20 MR. KELLY: Your Honor, the appellant in *Calimlim*
21 took very broad claim of error saying that as formulated by
22 the Court that no victim in a forced labor prosecution
23 could -- that would be double counting in every case because
24 they're necessarily vulnerable victims. That's not our
25 argument. Our argument is fact-intensive in the sense that we

1 have to determine, if we're going to make categorical
2 statements that certain groups are automatically vulnerable
3 victims, we at least need to make factual findings about
4 whether these people fit in that group.

5 So we point out that the only -- the only available
6 factual basis to meet the element of coercion is the
7 immigration status. So that is distinctive, our argument is
8 distinctive from the argument raised in *Calimlim* for that
9 reason.

10 But then I would also point out that the statement
11 which was -- the statement of law which was just made by the
12 government, even if we accept it as binding and not some sort
13 of victim, refers to illegal aliens. I don't like the term
14 "illegal alien." I prefer the term "undocumented immigrant"
15 as the government chose to use. But these were asylum
16 seekers.

17 So just as purely as a matter of law, we would be
18 outside of the directly controlling limitations of *Calimlim* in
19 that. We would -- we would just urge the Court that we
20 believe we shouldn't make these generalizations that all
21 foreign nationals are vulnerable, that all -- you know, these
22 were asylum seekers. They were regularly inspected by the
23 immigration authorities.

24 I point to the statement in the probation report
25 which says that they were vulnerable for fear of being

1 identified by Immigration. That's just not applicable here
2 where Immigration was regularly appearing, inspecting, and
3 monitoring their status as asylees.

4 So I would just make the point resting on our
5 filings, we're making the point that we're not controlled by
6 *Calimlim* in that respect because these were not, to use the
7 phrase, illegal aliens and for the other reasons I have stated.

8 THE COURT: Okay. Yes, I think here the enhancement
9 does apply. The government has shown this both as a matter of
10 law and factually. In terms of the legal premise, the cases
11 that you had cited in your briefs, the Fifth Circuit cases,
12 obviously are much farther away in relevance than the *Calimlim*
13 case which the government has cited.

14 So first, you did argue in your brief that those who
15 are aliens to the United States should not be considered
16 vulnerable victims because there's some sort of incorporation
17 of that status into Section 1589 of the offense itself. And
18 that's just not accurate. Section 1589 does not necessarily
19 refer to immigration status.

20 And the two Fifth Circuit cases that were cited in
21 the brief which were *United States v. Medina-Argueta*, 454 F.3d
22 479 at Page 483, and *U.S. v. Angeles-Mendoza*, 407 F.3d 742 at
23 Pages 747 and '48, those two Fifth Circuit cases were alien
24 smuggling cases. So the alien status of the victims was
25 indeed incorporated into 8 USC 1324. So that's not the

1 situation with 1589. So as a matter of law, it can very well
2 encompass immigration status as part of the vulnerability of
3 the victim.

4 And the victims who worked under the fraudulent
5 identification documents, they were susceptible to deportation
6 because they were using fraud documents to work that -- and
7 fraud documents that the defendant procured in order to then
8 obtain funds from them for the purported debts that they owed
9 her.

10 So I do believe that 3A1.1, it can cover, in the
11 appropriate case, immigration status, and it does here because
12 of the numerous victims who were working under fraudulent
13 documents.

14 Also, the PSR cited their deep and intense poverty,
15 that is, the poverty of the victims, which led them to have
16 very little choice and to be especially vulnerable. And I
17 think that applies as well here.

18 The grand jury statements are very specific as to
19 each victim in terms of how much they would have left over,
20 most of them saying that they had very little left over after
21 each week when they had to pay the defendant. Victim 10, for
22 example, said that she, after paying the defendant, was left
23 with maybe \$150 per week; Victim 9 similarly, around \$130 per
24 week after the defendant took wages from that person, and so
25 on. And so I think that made them especially vulnerable as

1 well because they had no choice and no means to escape the
2 defendant's threat of deportation.

3 And I also note here that the defendant, according to
4 the grand jury statements, did make these deportation threats
5 with respect to the children staying in the United States
6 while the parents would be deported. And that was reported by
7 Victims 2, 3, and 4. So and really, that's just kind of the
8 cherry on top. The other facts support the vulnerable victim
9 enhancement without that. So this two-level increase does
10 apply.

11 So with that calculation, we're left with a total
12 adjusted offense level, assuming acceptance of responsibility
13 still ends up applying, of 26, criminal history category I,
14 which is 63 to 78 months.

15 Okay. So let's now move on to 3553 arguments. And
16 we can start with the government. And whenever you want
17 during your presentation to present the victim witnesses, you
18 can go ahead and do that. I'll note for the record that the
19 victims are being referred to by numerical designations that
20 they've carried throughout the entire case and that the -- I
21 assume that the defense counsel has had these designations
22 since the beginning of the case.

23 MR. RASCIA: In various documents, they've been
24 referred to by numbers and letters. But I think based on the
25 last chart I received from Mr. Parente, I have no issue

1 identifying who No. 1, who No. 2 is. And I don't intend to
2 refer to any of them by name other than by their number and
3 perhaps, as I mentioned earlier, "mother of the child" or
4 something of that nature. But we're not -- we do not intend
5 to address anyone by their name.

6 THE COURT: All right. Very good.

7 Okay. Mr. Parente?

8 MR. PARENTE: Thank you, Judge. And with the Court's
9 indulgence, the way we'd like to proceed is do the victim
10 impact statements first, and then I'll do my argument. And
11 the way we have this set up -- and again, this is, we'll see
12 how well this works -- Victim 10 would like to go first by
13 phone. And then after Victim 10, we'll have Victims 4 and 5
14 either by phone or video, depending on the capabilities, and
15 then Victim 8 by phone.

16 And then the next three statements by Victims 9, 7,
17 and 2, the Court has -- or the victims have requested that I
18 read them to your Honor. With the Court's permission, I spoke
19 to defense counsel, I would request the ability to do that.

20 THE COURT: Okay. Very well. So okay. Let's try
21 Victim 10 by phone first. So she can unmute herself.

22 VICTIM 10: (Speaking in Spanish.)

23 THE COURT: Okay. So --

24 THE CLERK: She's on video.

25 THE COURT: Let's go off the record for a second as

1 we deal with this.

2 (Discussion had off the record.)

3 THE COURT: Let's go back on the record.

4 Okay. So we do see her, Victim 10, on the bottom of
5 the display, and we can also hear her. And then for the
6 record, she is speaking in Spanish, and the interpreters will
7 be rendering.

8 Okay. So let's put Victim 10 under oath, Mike.

9 THE CLERK: If you would please raise your right
10 hand.

11 (Witness sworn through the interpreter.)

12 VICTIM 10: I do.

13 THE CLERK: Thank you.

14 THE COURT: All right. Mr. Parente?

15 MR. PARENTE: Okay. Ma'am, can you please tell the
16 Court how this crime has affected you?

17 VICTIM 10: Yes. Very good afternoon to everybody.
18 First, I would like to say that I filed this report many years
19 ago, and the motive being that I was very affected by all
20 this. I brought my family here to this country.

21 So when I arrived, everything was fine. And, you
22 know, she told me that I had to pay for the trip. And I had
23 no problem with that. I didn't oppose it.

24 So when I became bothered by this was that I owed
25 \$12,000. And there was a problem that I had with her niece.

1 So I decided to leave the house. And she said that
2 if I left the house that she would threaten me to Immigration.

3 So then because I didn't want to go back to her
4 house, she said that I had to pay back to her 23,000-
5 something.

6 So then she said that because I was not going to live
7 under her roof that the bank had told her that I would have to
8 pay the interest of that money.

9 So then I told her that I wanted to speak to the
10 manager of the bank to know why they were charging me that
11 money.

12 So she said no one speaks Spanish over there. So I
13 said, "Well, how would that be possible? There's always
14 somebody everywhere that speaks Spanish."

15 So then I returned to her house. She said she had
16 gotten me a job of \$17 an hour so that I could return her
17 money soon.

18 But I think that it was all trying to fool me because
19 when we got to the work, to the job, they needed somebody who
20 spoke English. And I had just arrived to the country not long
21 before.

22 So then I returned to the -- to her house, and I
23 stayed there. So I asked her, "Well, now that I'm living in
24 your house under your roof, do I still have to pay the same
25 quantity?"

1 So I stayed in her house until I finished paying her
2 because she said I could not leave her house until I finished
3 paying her money.

4 So then I finished paying her money, and that's when
5 I left, like in May of 2013. That's when I left.

6 And actually, even on the last day that I was there,
7 she wanted to charge me 500 additional dollars for damage she
8 said to the room where I was staying.

9 And so that's what happened. And that's the most
10 important thing. And that's why I filed a report against her.

11 So I thought -- and the reason I did that is because
12 I thought it was unjust, you know. I had no problem paying
13 for money. I felt I had not spent that money. I had no
14 problem paying for rent or food or things that I was
15 responsible for.

16 And so that's everything but, you know, there's a lot
17 of things that happened over there but, you know, we would not
18 be able to finish today. So that's the reason I filed the
19 report. It was because of the money.

20 MR. PARENTE: And I wanted to thank you, ma'am, for
21 sharing your story with us today.

22 Is there anything else that you want to tell the
23 judge today kind of about what happened to you that's
24 important to you that you'd like to state? If so, now is your
25 time.

1 VICTIM 10: Well, that's all I have to say.

2 MR. PARENTE: And we thank you for your time, ma'am.

3 VICTIM 10: Thanks to you.

4 THE COURT: Okay. Mr. Parente, the next one.

5 MR. PARENTE: Yes, your Honor. And just so the Court
6 has context, Victim 10 was the first victim.

7 THE COURT: Yes, I understand.

8 MR. PARENTE: And she reported the -- she reported it
9 to the FBI in 2014, and then that kind of led to this
10 investigation.

11 THE COURT: Yes. It's in the PSR. I understand.
12 Thank you.

13 MR. PARENTE: And at this point, we'll ask Victims 4
14 and 5 who I believe are together, your Honor.

15 THE COURT: Okay. Yes, please do prompt them one at
16 a time, though. All right?

17 MR. PARENTE: Correct.

18 THE COURT: Yes.

19 UNIDENTIFIED SPEAKER: I'm sorry. I have another
20 call.

21 (Pause.)

22 VICTIM 3: Hello. Good afternoon.

23 MR. PARENTE: Good afternoon, sir. Thank you for
24 joining us. And my name is Chris Parente. We met before. I
25 know you can't see me, but as we discussed previously, this is

1 your chance to tell the Court about your experience and what
2 happened to you. So whenever you're ready, I'd ask that you
3 please start.

4 And I apologize, Judge. Do you want him under oath,
5 your Honor?

6 THE COURT: Yes. So we'll ask that in a moment. Can
7 you tell me what the number designation of this person is?

8 MR. PARENTE: Yes, your Honor. This is Victim 3.

9 THE COURT: Okay. All right. I'll ask the courtroom
10 deputy to put Victim 3 under oath.

11 THE CLERK: If you would please raise your right
12 hand.

13 (Witness sworn through the interpreter.)

14 VICTIM 3: I do.

15 THE COURT: All right. Mr. Parente, you can proceed.

16 MR. PARENTE: Thank you.

17 Sir, you can begin whenever you're ready.

18 VICTIM 3: Well, when I lived with Ms. Malinek
19 personally, the time that I lived with her, the truth is, I
20 don't feel well because of what she did to us because she
21 would abuse us in different ways. She would -- she would tell
22 us off every week.

23 INTERPRETER CARBAJOSA: The interpreter is going to
24 instruct him to pause so it's not awkward, your Honor, if
25 that's okay.

1 THE COURT: Okay.

2 INTERPRETER CARBAJOSA: Pause every few seconds.

3 THE COURT: Yes, please.

4 VICTIM 3: So when she would finish talking to us,
5 she would say, "If somebody asks how you're all living in my
6 house, you all have no right to give information. If somebody
7 listens, speaking badly about me or giving information how
8 you're living in my house, I will send you all out but without
9 the children," she'd say, "because you are not in your
10 country, and nobody can help you," she would say.

11 That's why we are scared, that our children are
12 taken. One cannot live without children. This also affected
13 me a lot because of my son because she said the children
14 cannot go outside because the police will take them away, and
15 you will no longer have children. That's why my child would
16 feel very sad when hearing those words, being locked up in the
17 house but in darkness because the lady would not allow the
18 lights to be turned on inside the house because according to
19 her, the electricity was cut off.

20 And one day the toilet became stuck, and the house
21 became full of disgusting things. The smell was unbearable.
22 We could no longer eat, bathe, at ease. We were like that for
23 six days. It really affected us a lot, but she didn't care.
24 What she said was we are guilty because the toilet became
25 plugged up. We could not reply or explain because the lady

1 would get angry, and we didn't want to argue.

2 So I have never forgotten what happened with this
3 lady. I also became traumatized because I was scared. I am
4 also scared because of my family, because she's saying that
5 one day she's going to leave the place that she's at and she's
6 going to have her vengeance. That's all. Thank you.

7 MR. PARENTE: Thank you, sir. I appreciate your
8 willingness to share your story with us.

9 THE COURT: Mr. Rascia -- Mr. Rascia, do you have any
10 questions?

11 MR. RASCIA: I do have a question.

12 THE COURT: Okay. And I didn't ask you about for
13 Victim 10. Did you have a question for her?

14 MR. RASCIA: I did not.

15 THE COURT: Okay. So actually, if you can have -- I
16 think he might have just left, so if you can alert him to
17 return to wherever he was sitting.

18 INTERPRETER O'HANLON: Your Honor, may the
19 interpreters change?

20 THE COURT: Yes, of course. Thank you.

21 (Pause.)

22 THE COURT: Okay. There he is. Go ahead,
23 Mr. Rascia.

24 MR. RASCIA: Sir, since the time that Ms. Malinek was
25 arrested, have you had a conversation with her directly?

1 VICTIM 3: No.

2 MR. RASCIA: Judge, I don't have any further
3 questions.

4 THE COURT: All right. Mr. Parente, do you have any
5 questions, follow-up?

6 MR. PARENTE: Sir, you mentioned that you're scared
7 because one day, she's saying that she'll get out and have her
8 vengeance. Why do you say that?

9 VICTIM 3: Yes. Yes, it's the truth, yes.

10 MR. PARENTE: And what is that based on? Why do you
11 think that?

12 VICTIM 3: Well, because of the way she is. I mean,
13 it's really hard to describe, but I lived with that lady.

14 MR. PARENTE: Thank you, sir.

15 THE COURT: All right. Anything else, Mr. Rascia?

16 MR. RASCIA: Please, your Honor.

17 THE COURT: Okay.

18 MR. RASCIA: Sir, to be perfectly clear, Ms. Malinek
19 never said to you directly that when she gets out of jail,
20 there will be consequences?

21 INTERPRETER O'HANLON: Your Honor, may the
22 interpreter ask the witness to speak closer to the microphone
23 again?

24 THE COURT: Yes, please.

25 VICTIM 3: Well, yes. The truth is that she has

1 family in Guatemala, so that is what I've heard.

2 MR. RASCIA: But you didn't hear that directly from
3 Ms. Malinek, did you?

4 VICTIM 3: No, just through her family.

5 MR. RASCIA: Did you speak directly to a member of
6 Ms. Malinek's family?

7 VICTIM 3: No, not that either, but my mother was
8 telling me that. So that's why I'm afraid up until now.

9 MR. RASCIA: I don't have any further questions, your
10 Honor.

11 THE COURT: Okay. Anything else, Mr. Parente?

12 MR. PARENTE: Sir, your mother still lives in
13 Guatemala?

14 VICTIM 3: Yes.

15 MR. PARENTE: And this is information your mother
16 heard in Guatemala?

17 VICTIM 3: Yes.

18 MR. PARENTE: Nothing further. Thank you, sir.

19 THE COURT: All right. Anything else, Mr. Rascia?

20 MR. RASCIA: No, your Honor. Thank you.

21 THE COURT: Okay. We'll hear from, is it Victim 4
22 next?

23 MR. PARENTE: Correct, Judge, on the same line here.

24 THE COURT: All right.

25 (Pause.)

1 THE COURT: All right. You can go ahead.

2 MR. PARENTE: Good afternoon, ma'am. My name is
3 Chris Parente. We met before. I know you can't see me, but
4 thank you for being here today.

5 THE COURT: Let's --

6 MR. PARENTE: Can we translate that?

7 THE COURT: Was that translated?

8 INTERPRETER O'HANLON: It was, your Honor, to the
9 defendant.

10 INTERPRETER CARBAJOSA: The interpreter Jorge
11 Carbajosa interpreted directly to the witness. I believe
12 that -- but go ahead, counsel.

13 THE COURT: Okay. And let me just -- is there an
14 interpreter with them?

15 MR. PARENTE: No, your Honor.

16 THE COURT: Okay. All right. And then let's put the
17 witness under oath.

18 (Witness sworn through the interpreter.)

19 VICTIM 4: I swear.

20 MR. PARENTE: Thank you, ma'am, for joining us.

21 Again, my name is Chris Parente. We met before although you
22 can't see me.

23 And ma'am, this is your opportunity to tell the Court
24 as we discussed how this crime has affected you. So whenever
25 you're ready, please begin.

1 VICTIM 4: It has affected me a lot. I am a survivor
2 of human trafficking. And it's very hard to tell what I lived
3 through and my family.

4 Well, I personally, it has affected me a lot. I
5 don't go out, and I don't have any friends. I feel very
6 afraid, and that fear follows me wherever I go because the
7 lady has threatened us that wherever we go, Guatemala or
8 somewhere else, she is going to have her vengeance because
9 we're the ones that are guilty for her going to jail.

10 Because when we were living in her house, she said
11 that we had no reason to be giving information to anyone
12 because we had no right to tell anyone how we were living.
13 Even when I came to the United States, she humiliated me. She
14 said things to me that really affected me personally.

15 In fact, when I would leave my daughter to go to
16 work, my daughter would cry, and she would tell me that the
17 lady was very bad. She would tell me that she wanted to go
18 back to Guatemala because she was not the playful child
19 anymore. The lady would lock her in there. That playful girl
20 that I knew was completely changed. She said that she would
21 be locked in the dark, and it was like hell in there, and she
22 didn't like that.

23 And one time I came back from work, and they were all
24 at the house. And I found her crying. And she said that the
25 lady had humiliated her from what she said to her. In fact,

1 my oldest son would feel very afraid when he went outside.
2 She would tell him that if he went outside, someone would hurt
3 him, he would get hurt. So that's what the lady would say to
4 the children so they wouldn't go outside.

5 It's the biggest fear that I have now. I'm very
6 afraid, not so much for myself but for my children and also
7 for my family back in Guatemala. That's all I wanted to say.

8 MR. PARENTE: Thank you, ma'am, for sharing your
9 story with us. And defense counsel is going to ask you a few
10 questions.

11 MR. RASCIA: Good afternoon. Your husband came to
12 the United States and began to live with Ms. Malinek in April
13 or May of 2018, correct?

14 VICTIM 4: Uh-huh, that's correct.

15 MR. RASCIA: And you came to live in Ms. Malinek's
16 home in February of 2019, correct?

17 VICTIM 4: Correct.

18 MR. RASCIA: And in March of 2019, at the end of
19 March, Ms. Malinek was arrested, correct?

20 VICTIM 4: Yes.

21 MR. RASCIA: From the day Ms. Malinek was placed
22 under arrest, have you had a conversation with her since that
23 time?

24 VICTIM 4: No.

25 MR. RASCIA: Your Honor, I have nothing further.

1 THE COURT: All right. Any other questions,
2 Mr. Parente?

3 MR. PARENTE: No, your Honor.

4 THE COURT: Okay. You are excused as well.

5 (Witness excused.)

6 THE COURT: All right. Mr. Parente, do you have one
7 more person to present?

8 MR. PARENTE: Yes, your Honor. This one will be just
9 by phone. It's going to be Victim 8. I'll approach your
10 deputy with permission.

11 THE COURT: All right.

12 (Pause.)

13 THE COURT: Yes. So Victim 8 can unmute herself
14 whenever she's ready to go.

15 VICTIM 8: Hello. Good afternoon.

16 THE COURT: Okay. This is the judge. We do have to
17 put you under an oath to tell the truth.

18 So I'll ask the courtroom deputy to do that now.

19 THE CLERK: If you could please raise your right
20 hand.

21 (Witness sworn through the interpreter.)

22 VICTIM 8: I do.

23 THE COURT: All right. Mr. Parente?

24 MR. PARENTE: Thank you, Judge.

25 Ma'am, my name is Chris Parente. We met before. I'm

1 the prosecutor on the Malinek case. And as we spoke about
2 before, this is your opportunity to let the judge know how
3 this crime affected you. So whenever you're ready, please
4 begin.

5 INTERPRETER CARBAJOSA: The interpreter said, please
6 allow me a pause after every few sentences so I can translate.

7 VICTIM 8: Yes. Thank you so much for having me --
8 for having given me this opportunity to make my statement. I
9 was born in Bartolomé de las Casas in Guatemala. I was in
10 school up to the seventh grade.

11 INTERPRETER CARBAJOSA: The interpreter is going to
12 ask her to repeat. She's not coming out very loudly.

13 THE COURT: All right. Sure.

14 VICTIM 8: I had a relationship with a person who
15 also lived in the house, Concepcion's house. And we have two
16 children. It was very difficult for me to speak and to make
17 my statement, but I also want justice to be done the way it
18 should be.

19 I am very fearful for my family in Guatemala because
20 the family of Ms. Malinek has said that the things that have
21 happened and the death of her parent will not remain like that
22 and that they will see that justice is made. They said that
23 the death of her parent was a pain that Ms. Malinek had to go
24 through while she was in jail. That's why they said they're
25 not going to remain with their arms crossed.

1 The truth is, I never imagined that my family and I,
2 that we were going to be victims of human trafficking. When I
3 left Guatemala with the hope of being with my -- with my
4 partner, I thought I was going to arrive to the house of
5 somebody who would be kind and somebody who was respectful,
6 but that's not the way it was. And I felt very badly because
7 I never wanted my family to know what was happening. I only
8 wanted a better life and a better future for my child. But
9 while I was at Malinek's house, I never thought that those
10 things were possible, that they would happen. I thought my
11 life would remain like that, devastated.

12 Since Ms. Malinek was controlling us and even after
13 we were rescued from her house, I have not been able to live
14 my life. Sometimes I start to think what I went through in
15 Malinek's house and how difficult it was. Ms. Malinek would
16 always intimidate by the way she spoke to us. She would
17 always say that we were useless people, that we knew nothing
18 and that nobody would care whatever would happen to us because
19 we are some immigrants and that she's the one that decides
20 what we have to do.

21 One time we told her we wanted to travel to Florida,
22 and she said that if you wanted to move to a different state
23 that we would have to sign some papers with them to make sure
24 that we would pay her or otherwise, she would report us to
25 immigration and she would deport us.

1 We just wanted to leave as soon as possible from
2 Ms. Malinek's house. We could no longer bear the conditions
3 that Ms. Malinek made us live in. We were like 43 people in
4 that house, and there were only two bathrooms and two --

5 INTERPRETER CARBAJOSA: The interpreter here. The
6 interpreter would ask her to repeat. "Whenever people
7 would" --

8 VICTIM 8: Two kitchens.

9 We did not have a personal bathroom. It was very
10 difficult to use the bathroom and the kitchen with so many
11 people. Sometimes we would go to work without food because
12 there was very little space. And then my son got burnt, his
13 head, in the head, when I was at work.

14 I just wanted to leave Ms. Malinek's house. I could
15 no longer take it. I felt a strong pain because of my son and
16 also a great fear of losing him. Ms. Malinek told me that if
17 I took him to a clinic that he would be taken away from me and
18 that I would be deported and that I would never see my son
19 again. Malinek said it was my fault and that she was going to
20 tell the authorities what happened. I could not understand
21 how it could be my fault if I was at work. So because of the
22 fear, I didn't take my son to a clinic.

23 So now my partner and I, we try to make it through,
24 go on with life, but it's impossible to forget what we went
25 through because of Ms. Malinek. I don't know what would be of

1 us if we still were with her. I don't know what would be of
2 my two children. She is very aggressive. I am very grateful
3 for the detectives for the help that they provided to us to be
4 able to escape from the house.

5 MR. PARENTE: Ma'am, are you still there?

6 VICTIM 8: Yes.

7 MR. PARENTE: Is there anything else that you wanted
8 to say to the Court, or was that the end of your statement?

9 VICTIM 8: I just want to add many thanks. Thank you
10 so much for the help that you gave us. I would not know how
11 to pay you back. I am very grateful for the help that was
12 provided to us by the authorities and by lawyers.

13 MR. PARENTE: Ma'am, and I thank you for sharing your
14 statement. At this point, I think defense counsel will
15 probably ask you a few questions if that's okay.

16 INTERPRETER CARBAJOSA: The interpreter didn't hear
17 that.

18 VICTIM 8: What?

19 MR. PARENTE: Ma'am, the defense attorney, I believe,
20 has a question or two for you.

21 VICTIM 8: Okay.

22 MR. RASCIA: Good afternoon. Ma'am, prior to
23 arriving at Ms. Malinek's residence, is it true that you spent
24 five months in immigration custody in Texas?

25 VICTIM 8: Yes.

1 MR. RASCIA: Ma'am, you testified about being told
2 about Ms. Malinek's family or a family member not sitting with
3 their arms folded over the death of Ms. Malinek's parents.
4 Did someone say that directly to you?

5 VICTIM 8: Not directly, but when her parents died,
6 Ms. Malinek's parents, my mother went over there to express
7 her condolences, and they started to say that behind her back,
8 so they did directly to her.

9 MR. RASCIA: Well, Ms. Malinek, the defendant in this
10 case, she never said any of those things to your family, did
11 she?

12 VICTIM 8: No, no, no. I have not heard anything
13 coming out of her mouth from her.

14 MR. RASCIA: How long did you actually live in
15 Ms. Malinek's residence?

16 VICTIM 8: Five months.

17 MR. RASCIA: Thank you. I don't have anything
18 further.

19 THE COURT: All right. Anything else, Mr. Parente?

20 MR. PARENTE: No, your Honor.

21 THE COURT: Okay. You are excused.

22 (Witness excused.)

23 THE COURT: All right. Anyone else to present,
24 Mr. Parente?

25 MR. PARENTE: Judge, just the three witnesses who

1 requested that we read their statements to your Honor.

2 THE COURT: Okay. Why don't you go ahead and do
3 that, and then we'll take a break after that.

4 MR. PARENTE: Okay. Thank you, your Honor. And for
5 record, this will be Victim 2's statement to the Court.

6 INTERPRETER CARBAJOSA: May the interpreter have
7 access to those statements so we can read along?

8 THE COURT: Yes. Do you have an extra copy?

9 MR. RASCIA: Judge, I think I do.

10 THE COURT: All right. Thank you, Mr. Rascia.

11 MR. PARENTE: "My name is Victim 2. I was born in
12 Fray Bartolomé de las Casas, a small town in central
13 Guatemala. I attended school through the fourth grade,
14 then started working to earn money for my family. I have
15 been married to my wife for nearly 20 years and together,
16 we have three children.

17 "I fled Guatemala to seek better opportunities for my
18 daughter and to try to find a way out of Guatemala's
19 constant danger. However, when I arrived, Ms. Malinek, a
20 woman from our community, forced my daughter and me into
21 a trafficking situation. Having to live a trafficking
22 experience was hard and something I don't wish for
23 anybody, but I focus on the now. Trying to talk about
24 this is difficult for me, but I want to make sure
25 Ms. Malinek does not do this to anyone else, so I will

1 tell you what I can.

2 "My daughter is still a minor. She doesn't want to
3 talk about it anymore. She wants to be young and to
4 study. I couldn't control what happened to her during
5 her trafficking, but I can protect her here. This is why
6 she is not talking at this hearing even though she has
7 suffered very greatly. She just wants to move on.

8 "This case is very hard for us. Sometimes it feels
9 like we are still in the middle of everything. While we
10 were in Malinek's house, I was always uncertain of what
11 would happen and how it would all end. It still feels
12 this way. I feel like I have been in this for too long.
13 I feel like I cannot leave the trafficking behind, like
14 I'm still not free. I just want this all to be over.

15 "It has been a slow recovery of my trust in people.
16 My character with new people has changed. I don't trust
17 like I used to. I used to find the rhythm of work easily
18 and could adapt to change quickly. It's harder for me to
19 make change now. I am someone who likes teamwork, to
20 come to an accord with the people I work with, but now it
21 feels like I do this less.

22 "My communication with each person is hard work now.
23 I just feel like things are different. Nothing feels the
24 same. Ms. Malinek asked me for more and more money, and
25 I made a lot of debt in Guatemala because of this. At

1 first I thought I could still trust her. I believed what
2 she said. It never occurred to me I could not believe
3 her or that she would charge me more money than was fair
4 because she was known to me. It is very difficult now.
5 I often think about this.

6 "She was not who I thought she was. She acted like I
7 didn't know anything and like she just didn't know I had
8 the same rights as another human. I feel that she
9 treated me like that because I have no education or
10 resources. Now I know I have to really analyze people
11 before I trust them.

12 "When my daughter and I started to live at
13 Ms. Malinek's house, it felt like she had control over
14 us, and the only thing I could do was obey her rules.
15 Ms. Malinek told me I owed her so much more money than we
16 had agreed for no reason. I relied on her, and I felt
17 like I had no choice. She had all the control, and I
18 felt powerless. We were truly trapped.

19 "I felt that Ms. Malinek took considerable advantage
20 because I did not know how the situation was in the
21 United States. I still think about this time and how I
22 had no control over our lives. My daughter was alone a
23 lot, and when she was not alone Ms. Malinek would treat
24 her really badly. Then she started talking about how my
25 daughter should sleep with her cousin, an adult woman. I

1 learned later that my daughter was made to sleep in the
2 same bed as this woman. I lament that this happened.

3 "I brought her here for good future, and when all
4 this happened, I felt so bad for bringing her. I was so
5 upset and worried, and my daughter cried every day. When
6 Ms. Malinek told me that my kid could not go to school
7 and that she had to start -- she had to work to pay for
8 the debt, it was a breaking point for me. I intended to
9 work for my kid and give her a good education.

10 "I got very depressed after that. I felt guilty. I
11 became preoccupied with my kid's physical and emotional
12 health. The few chances I would get to see her, my
13 daughter would blame me for leaving her alone and having
14 permitted Ms. Malinek to separate us. Seeing my kid sad
15 distressed me every time.

16 "I still do not like to think about this. It was a
17 terrible time. Watching my daughter try to recover from
18 this and knowing that I could not protect her from
19 Malinek has impacted my life. I felt so sad. I did not
20 know what to do. I couldn't do anything because we were
21 in her house, and she had told me that if I were
22 deported, my daughter would stay here with her. I knew I
23 could not risk leaving my daughter with Ms. Malinek.

24 "I spent so much time feeling so sad and preoccupied
25 with what to do with this that I became hopeless. My

1 daughter and I lived in fear of being detained by police
2 and the immigration officers because of Ms. Malinek's
3 threats.

4 "I will never forget how it felt to leave that place
5 finally. We sometimes talk about what could have
6 happened, and we give thanks to God that we are not there
7 now, that people came and took us out of there. I think
8 my daughter is recovering, and now she is working on her
9 studies. I feel relief for her, and I continue trying to
10 make her life better. Now that we have both gone through
11 this, she is more adult than she was. She often has a
12 say in our life that she didn't before. If no one had
13 come, we might still be there, my daughter would not be
14 able to study.

15 "Now I worry all the time about my family in
16 Guatemala. We are still dealing with the case, the fear
17 of what Ms. Malinek or her family in Guatemala could do
18 to my wife and sons. I am afraid to return to my home
19 where my family is, and every day I worry that something
20 could happen. I often worry that supporting this case is
21 putting them in more danger.

22 "I do not want what happened to me to happen to
23 anyone else. I was so thankful to Malinek at first. She
24 seemed like she was helping me but with time, I saw that
25 she had trapped my daughter and me. That time and the

1 sadness I felt stays with me. It has changed and harmed
2 all of us. She used my daughter and me. She stole time.
3 She threatened, traumatized, and humiliated my daughter.
4 I still fear of her power and her threats over my family
5 and me.

6 "I am giving this statement because I feel like it is
7 important to tell what happened to me, what happened with
8 her. I could not say what I have not lived or seen with
9 my own eyes, but I do have to tell the truth, and this is
10 the truth."

11 And just for the record, Judge, that's Victim 2, the
12 father of Victim 1.

13 THE COURT: All right.

14 MR. PARENTE: The next statement, your Honor, is by
15 Victim 7:

16 "I am one of those affected by Mrs. Concepcion
17 Malinek, and this is my declaration about what happened.
18 I didn't want to be in court because I don't want to have
19 to see her again and be reminded of what I had to live
20 through in her house. I also think about my family in
21 Guatemala. The majority of her family is in Guatemala,
22 and this could cause a problem for my family who lives
23 there now. If something happened to them in the future,
24 I wouldn't forgive myself:

25 "When I arrived in the United States, I didn't know

1 anyone. I didn't have family, and I felt completely
2 alone. I had left Guatemala for the opportunity to help
3 my family get ahead in life. I had to take out a loan
4 with interest to pay for my trip to the United States.
5 As soon as I left Guatemala, the interest started to
6 accrue.

7 "Ms. Malinek promised that I would have a good job
8 and life in the United States, but when I arrived in her
9 house, I realized this was a lie. From the first day
10 with Ms. Malinek, I had to pay. This made me feel
11 stressed and disillusioned. It was a lot of pressure. I
12 didn't sleep well because I was thinking, 'What am I
13 going to do? I don't know this country, this city, or
14 where I am.'

15 "I only hoped that I would find a solution to all of
16 this. Ms. Malinek wanted the money. She demanded that
17 we pay her as soon as possible. She told me things like,
18 'So long as you don't pay me down to the last cent, you
19 can't leave here' and, 'You'll be free when you pay off
20 the balance with me.'

21 "I told her that I had family in Guatemala that I
22 needed to support while I was in the United States, but
23 she didn't care about my situation. The only thing she
24 cared about was that you pay her. 'You're already here,'
25 she would say, 'and you already left your family behind.'

1 "I arrived with a lot of excitement and motivation to
2 work, but when I saw how things were, I thought I would
3 never be able to support my family like I planned because
4 I would always be paying a debt. Sometimes I couldn't
5 send money to my family or pay the interest on my debt in
6 Guatemala because I had to pay the debt to Ms. Malinek
7 first. The little that I earned, and it was not a large
8 amount, the majority of it went to her. This caused
9 financial stress, and it was difficult for me to
10 concentrate. There was no way to escape it. I had debt
11 here, debt in Guatemala, and I had to send money back
12 home to support my family.

13 "My wife was very sad and felt let down by me. She
14 said it would have been better if I never left. I felt
15 the same. All of this affected the relationship with my
16 family. At the beginning, they didn't understand what I
17 was experiencing here. They thought I was living a good
18 life in the United States. I was two months behind on my
19 interest payments in Guatemala because after I paid my
20 debt to Malinek, I didn't have any money left.

21 "The person who I owed money to in Guatemala put
22 pressure on my wife because she lived there. My wife
23 didn't understand why I couldn't pay the debt. It was
24 uncomfortable. We didn't understand each other, but
25 little by little, she began understanding what was

1 happening here.

2 "I felt depressed and insecure when I realized the
3 difference between the reality we were living and what
4 Malinek had promised us. I had left my family and taken
5 on debt for all of this. She said that here, everything
6 was going to be great, but it wasn't like that.

7 "I was surprised to see so many people in one house.
8 I was surprised that there wasn't enough space, no
9 privacy, all of us crowded together down there. I was
10 surprised the way that Ms. Malinek treated people. She
11 did not treat us like human beings. In her house, she
12 had all the power and control. She would yell at people.
13 All her family members were there, and it didn't matter.
14 No one could contradict her.

15 "We arrived in the winter when it was cold and
16 snowing, and living in the basement was difficult. She
17 did not use heat or if she had it, it did not work. You
18 could not be in the basement without a coat or a blanket
19 on. There was no living room, no other space down there,
20 so you could only be in your bed. There were bunk beds,
21 one on top of another and another on the bottom, and
22 that's how she could fit more people.

23 "It was uncomfortable because there wasn't any place
24 to hang your things, so we had to put everything we had,
25 our clothes and things, on our beds. I was only allowed

1 in the basement, and there were few times that I went
2 upstairs. The only way you were allowed upstairs was to
3 pay your debt. Ms. Malinek would wait in the living room
4 to receive the payment. If you could not pay, she would
5 get very mad, and you had to pay her interest on your
6 next payment.

7 "I had to go to check-ins with Immigration, and I had
8 an ankle monitor. Sometimes Ms. Malinek would punish us
9 if she received calls from Immigration. She would get
10 very mad when Immigration called her to ask about us.
11 When the ankle monitor did not work or it was out of
12 battery, Immigration would first call us, but many times
13 we didn't have cell signal in the basement. And since
14 Malinek was our reference for Immigration, they would
15 call -- they would then call her. She would yell at us,
16 asking why we didn't charge our ankle monitors.

17 "I felt very low when I had the ankle bracelet. She
18 told me one time that Immigration was going to deport me.
19 She would say things like, 'Few people fix their papers.
20 Here, nothing is certain. One minute you're here but
21 tomorrow, you're gone.' From the beginning, I felt
22 traumatized because of this, and it has taken a long --
23 this long to feel more normal.

24 "When I go to work now, it's not even comparable to
25 the work and how things were with Malinek. Now I have

1 freedom in my job. I work in a job that is good for me.
2 The rules are fair. I feel good about what I do. Also,
3 now when I receive my payment, I have control over how to
4 use my earnings. From my point of view, not all people
5 are like Ms. Malinek. I wouldn't trust someone like
6 Malinek again, but not everyone is of such poor
7 character. It is good to trust if you have built that
8 trust with someone.

9 "Until this case is over, I won't be calm. I'm
10 always thinking about it. I hope that the law provides a
11 just sentence so that this does not happen to other
12 people in the future because when I came to this country,
13 it was to make a better life, to have a fair work. But
14 with Malinek, she tricked us, and her promises were never
15 realized. She just crowded people in her house to make
16 money."

17 Your Honor, the last statement will be Victim 9.

18 THE COURT: All right.

19 MR. PARENTE: "I was born in Fray Bartolomé de
20 la Casas, Guatemala. I have been in a committed
21 relationship with another person who lived in Malinek's
22 house, and we have two children together. I remember all
23 of the bad moments. I experienced a great amount of
24 humiliation that I was experienced even more threats.

25 "Malinek also deprived us of our rights as people.

1 There are times in which my family and I remember
2 everything that we experienced with Malinek, all of those
3 devastating moments. My family and I continue to fight
4 in order to forget so many depressing things and the
5 threats. I am terrified to give my statement, but I know
6 it is important that the truth be told and be known.

7 "My family and I were affected tremendously by being
8 victims of trafficking because we never thought we would
9 have experienced all that suffering that Ms. Malinek
10 caused us. Since we were rescued, little by little" --

11 THE COURT: Do you need a recess?

12 MR. RASCIA: Can I have a minute, Judge?

13 THE COURT: All right.

14 (Pause.)

15 MR. RASCIA: Your Honor, can I ask that we take a
16 break, and perhaps Mr. Parente could just start reading
17 this from the beginning when we reconvene?

18 THE COURT: All right. Let's take 15 minutes. We've
19 been going at it for a while. 15 minutes.

20 MR. RASCIA: Thank you.

21 (Recess from 3:09 p.m. to 4:04 p.m.)

22 THE CLERK: 19 CR 277, USA versus Concepcion Malinek.

23 THE COURT: Okay. This is Judge Chang again. We're
24 still, I think, connected through remote means. The same
25 appearances apply except the defendant is no longer present.

1 During the break, she expressed that she was feeling
2 ill and was experiencing some chest pains and distress. The
3 marshal service took her back up to the lockup to evaluate
4 her. And she did experience sufficient medical issues that we
5 have decided to adjourn for the day, and we will reschedule.
6 I'll be conferring with the lawyers through the courtroom
7 deputy over the next day and hopefully, we can get this reset
8 pretty quickly. The information will be put on the docket,
9 but we are adjourned for today.

10 Anything that the government wants to put on the
11 record?

12 MR. PARENTE: No, your Honor.

13 THE COURT: All right. Mr. Rascia, anything?

14 MR. RASCIA: No, Judge. Thank you.

15 THE COURT: All right. We're adjourned.

16 (Proceedings adjourned at 4:05 p.m.)
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable EDMOND E. CHANG, one of the judges of said court, at Chicago, Illinois, on March 23, 2021.

/s/ Judith A. Walsh, CSR, RDR, F/CRR July 12, 2021

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division